

This letter discusses purchases of watercraft. See 35 ILCS 105/3. (This is a GIL.)

September 7, 2006

Dear Xxxxx:

This letter is in response to your letter dated May 2, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please be advised that I represent INDIVIDUAL in regard to the registration of her sail boat vessel 'NAME' in the State of Illinois. The issue is whether or not INDIVIDUAL is required to pay an RUT-25 form, Illinois Dept of Revenue Use Tax Transaction Return. In short our argument is that no such tax is required because the vessel was purchased from an individual prior to October of 2004. Therefore, the present law enacted in October of 2004 does not apply. Please note that the transaction occurred on October 9th, of 2003, prior to the enactment of the present law requiring that a RUT-25 tax be required from the purchaser. With my most recent discussions with the Illinois Department of Natural Resources they indicated that they required a written letter from the Illinois Department of Revenue which indicates that under the circumstances, INDIVIDUAL would not be required to pay any taxes regarding that particular transaction.

I have prepared a number exhibits to help illustrate this fact.

EXHIBIT 'A' - The vessel was sold by SELLER to INDIVIDUAL. I have enclosed a copy of the Bill of Sale dated October 9, 2003. Please note, that SELLER of LLC is the named seller in this matter and the name of the buyer is INDIVIDUAL. The date of this transaction is October 9th, of 2003.

EXHIBIT 'B' - Please also find a notarized Acknowledgment of Act of Limited Liability Company which states that SELLER, did on October 16th, 2003 transfer by Bill of Sale

all right, title and interest of LLC, in the vessel NAME, official Number 3. It should also be noted that SELLER is the sole member of LLC and that attached heretofore, as exhibit 'B'.

EXHIBIT 'C' - Please find also attached hereto, a Deed of Gift which transfers the interest to the vessel NAME from INDIVIDUAL of CITY, Illinois to INC, an Illinois Corporation likewise of CITY, Illinois. This is attached as exhibit 'C'. Please note that this transaction is nearly contemporaneous with the transfer of the vessel from SELLER to INDIVIDUAL. No moneys were exchanged for this transaction as it was indeed a gift it [sic] INDIVIDUAL's corporation. INDIVIDUAL is the sole shareholder the aforesaid Illinois Corporation.

EXHIBIT 'D' - Please also find enclosed a Certificate of Documentation as exhibit 'D'. The Certificate of Documentation is issued by the Department of Homeland Security United States Coast Guard identifying the vessel NAME as being owned by INC. An Illinois corporation. Note that all of the [sic] this was done in 2003 There were absolutely no exchanges of funds for the aforesaid transfers a [sic] these transfers were merely a way [sic] maintaining ownership of the sailboat through corporate entities.

Please further note that I have been attempting to obtain a [sic] Illinois D N R registration since the [sic] 2003. When I had contacted D N R, I have been given various explanations by the DNR that because of vessel's being a US Coast Guard documented vessel it would not require [sic] to have it registered under Illinois D N R. Unfortunately, the process of a new application takes months and when you call DNR they have no ready method of tracking the progress of the application.

Please assist me in resolving this matter and forward the letter to my office indicating that there is no transaction or use tax required for the transfer of the sailing vessel NAME to INDIVIDUAL or to INC, an Illinois corporation occurring in October of 2003.

Thank you in advance fro [sic] your cooperation.

DEPARTMENT'S RESPONSE

We do not have enough information regarding the date and circumstances of this watercraft arriving in Illinois. We also do not know what taxes, if any, have been paid for it. However, we hope that the following information is helpful.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. The Retailers' Occupation Tax Act does not impose a tax upon persons who are not engaged in the business of selling tangible personal property. Persons who make isolated or occasional sales do not incur tax liability. See 86 Ill. Adm. Code 130.110.

Sales of new vehicles are subject to sales tax based on the gross receipts from the sale. Under 86 Ill. Adm. Code 130.425, the value of, or the credit given for a trade-in would not be counted as gross receipts. Any tax due would be based upon the gross receipts received in payment for the vehicle. Form RUT-25, Use Tax Return, is used to remit Use Tax to the Department if a new or used motor vehicle, watercraft, or aircraft is purchased from an out-of-State retailer.

The Use Tax does not apply to the use, in this State, of tangible personal property that is acquired outside this State by a nonresident individual who then brings the property to this State for use here, and who shall have used the property outside this State for at least 3 months before bringing the property to this State. See 86 Ill. Adm. Code 150.315.

Illinois will give a credit for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310. In addition, depreciation is allowed for out-of-State use. See 86 Ill. Adm. Code 150.110.

The Watercraft Use Tax is a privilege tax imposed on the privilege of using, in this State, watercraft acquired by gift, transfer, or non-retail purchase after September 1, 2004. See 86 Ill. Adm. Code 153.105. The rate of tax is 6.25% of the purchase price for each watercraft that is subject to the tax. See 35 ILCS 158/15-15. However, the purchase price shall not be less than the fair market value of the watercraft on the date the watercraft is purchased or the date the watercraft is brought into the State, whichever is later, unless the purchaser can document that a different value is reasonable. See 86 Ill. Adm. Code 153.110. The tax is imposed on the use of watercraft in this State regardless of whether the watercraft is actually registered under the Boat Registration and Safety Act.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk